

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Environmental Health Advocates, Inc. (“EHA”), on the one hand, and Kenney Manufacturing Company (“Kenney”), on the other hand, with EHA and Kenney each individually referred to as a “Party” and collectively as the “Parties.” EHA is a corporation in the State of California serving in the interest of the general public by seeking to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. EHA alleges that Kenney is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code § 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

EHA alleges that Kenney manufactures, sells, and/or distributes for sale in California, curtain rod brackets products that contain lead and that it does so without first providing the health hazard warning required by Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical known to cause cancer, developmental toxicity, and reproductive toxicity.

1.3 Product Description

The products covered by this Settlement Agreement are defined as curtain rod brackets, including but not limited to Mainstays 7/16 Inch Café Rod Brackets (“Covered Products”), that are manufactured, sold and/or distributed for sale in California by Kenney.

1.4 Notice of Violation

On or around March 21, 2024, EHA served Walmart, Inc. (“Walmart”), the California Attorney General, and certain other public enforcement agencies with a 60-Day Notice of Violation of Proposition 65 (“Notice”). The Notice alleged that Walmart had violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated with exposures to lead contained in Covered Products.

To the best of the parties’ knowledge, no public enforcer has commenced or is otherwise

prosecuting an action to enforce the violations alleged in the Notice.

1.5 Testing by EHA

On or around July 17, 2024, counsel for EHA provided certain documents to counsel for Kenney, including a Certificate of Analysis dated February 26, 2024, claiming that a sample of the Covered Products tested positive for lead (“Test Results”).

1.6 No Admission

Kenney denies the material, factual, and legal allegations in the Notice and/or the Test Results and maintains that all of the products it sold and/or distributed for sale in California, including Covered Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Kenney of any fact, finding, conclusion, issue of law or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Kenney of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Kenney. This Section shall not, however, diminish or otherwise affect Kenney’s obligations, responsibilities, and duties under this Settlement Agreement.

1.7 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean the date this Settlement Agreement is executed by the Parties.


2. INJUNCTIVE RELIEF

2.1 General Warning Requirements


Except as otherwise stated herein, commencing on the Effective Date, Kenney agrees any Covered Product sold or distributed for sale in California, shall contain a Proposition 65 warning. Kenney agrees that each warning shall be prominently placed with such conspicuousness, as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Covered Products the warning applies, so as to minimize the risk of consumer confusion.

For purposes of this Settlement Agreement, a clear and reasonable warning for the Covered

Products shall consist of a warning affixed to the packaging, label, tag, directly to each Covered Products sold in California by Kenney, or on a placard, shelf tag, sign or electronic device or automatic process that contains one of the following statements:

- 1)  **WARNING:** This product can expose you to chemicals including lead, which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

OR

- 2)  **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov.

The triangle above shall be yellow on the warning statement. This warning statement shall be prominently displayed on the Covered Products, on the packing of the Covered Products, or on a placard, shelf tag, or sign provided that the statement is displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual prior to sale. If the warning statement is displayed on the Covered Products' packaging, it must be in a type size no smaller than the largest type size used for other consumer information on the product. In no case shall a warning statement displayed on the Covered Products' packaging appear in a type size smaller than 6-point type. If the Covered Products' packaging contains consumer information in a foreign language, a warning statement in that language is required.

As set forth in Cal. Code Regs. Tit. 27, § 25602(b), to the extent Covered Products are sold online, a warning that complies with the content requirements of Cal. Code Regs Tit. 27, § 25603(a) must be provided by including either the warning or a clearly marked hyperlink using the word “**WARNING**” on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase. If an on-product warning is provided pursuant to Cal. Code Regs. Tit. 27, § 25603(b), the warning provided on the website may use the same content as the on-

product warning. For purposes of this section, a warning is not prominently displayed if the purchaser must search for it in the general content of the website. These requirements extend to any websites under the exclusive control of Kenney where Covered Products are sold into California. In addition, Kenney shall instruct any third-party website that sells Covered Products to include the same online warning, as set forth above, as a condition of selling the Covered Products in California.

There shall be no obligation for Kenney to provide a warning for Covered Products that entered the stream of commerce prior to the Effective Date, and the releases set forth in Section 4 apply to all such Covered Products.

(i) **Changes in Warning Regulations or Statutes**

In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting Proposition 65 warning text and/or methods of transmission applicable to the Covered Products and the chemical(s) at issue, which are different than those set forth above, Kenney shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Settlement Agreement. If regulations or legislation are enacted providing that Proposition 65 warnings as to lead in the Covered Products are no longer required, a lack of warning by Kenney will not thereafter be a breach of this Settlement Agreement.

2.2 Grace Period for Existing Inventory of Covered Products

The injunctive requirements of Section 2 of this Settlement Agreement shall not apply to Covered Products that are already in the stream of commerce as of the Effective Date, which Covered Products are expressly subject to the releases provided in Section 4. For the avoidance of doubt, Covered Products in the stream of commerce specifically include, but are not limited to, Covered Products in the process of manufacture.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged in the Notice, related to the Test Results, or referred to in this Settlement Agreement, Kenney agrees to pay two thousand (\$2,000.00) in civil penalties. The penalty payment will be allocated in

accordance with California Health and Safety Code §§ 25249.12(c)(1) & (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount retained by EHA. Shall issue two separate checks for the initial civil penalty payment to (a) “OEHHA” and (b) Environmental Health Advocates, Inc. as follows:

- One payment of \$1,500.00 to OEHHA, due fourteen (14) days after the Effective Date.
- One payment of \$500.00 to EHA, due fourteen (14) days after the Effective Date.

All payments owed to OEHHA (EIN: 68-0284486), pursuant to this Section shall be delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at the following addresses:

For United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

All penalty payments owed to EHA shall be sent to:

Isaac Fayman
Environmental Health Advocates
225 Broadway, Suite 1900
San Diego, CA 92101

3.2 Attorney Fees and Costs

The Parties reached an accord on the compensation due to EHA and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Kenney agrees to pay eighteen thousand dollars (\$18,000.00) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter the attention of Kenney, and negotiating a

settlement. The eighteen thousand dollars (\$18,000.00) in Attorney's Fees and Costs shall be payable to Entorno Law, LLP as one payment of \$18,000.00, due fourteen (14) days after the Effective Date.

All payments required under this Section shall be delivered to:

Noam Glick
Entorno Law, LLP
225 Broadway, Suite 1900
San Diego, CA 92101

3.3 Tax Documentation

Kenney agrees to provide a completed IRS 1099 for its payments to, and EHA agrees to provide IRS W-9 forms for, each of the payees under this Settlement Agreement. The Parties acknowledge that Kenney cannot issue any settlement payments pursuant to Section 3.1 and 3.2 above until after Kenney receives the requisite W-9 forms from EHA's counsel.

4. CLAIMS COVERED AND RELEASED

4.1 EHA's Release of Kenney, Upstream Entities and Downstream Entities

This Settlement Agreement is a full, final, and binding resolution of all claims that can or could have been asserted by EHA, on its own behalf and not on behalf of the public, and on behalf of each of its respective past, current, and future agents, parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, representatives, attorneys, successors and assignees (collectively with EHA, "EHA Releasers"), against Kenney, including each of its respective past, current, and future agents, parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, representatives, attorneys, successors and assignees (collectively, "Kenney Releasees"), and any entity, including, but not limited to, each entity from which Kenney purchases the Covered Products or any component of the Covered Products from and each of its past, current, and future agents, parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, representatives, attorneys, successors and assignees (collectively, "Upstream Releasees"), and any entity to whom Kenney directly or indirectly distributes or sells the Covered Products, including, but not limited to, its

downstream distributors, wholesalers, customers, franchisees, cooperative members, licensees, and retailers, including, but not limited to, Walmart, Inc. and each of Walmart's past, current, and future agents, parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, representatives, attorneys, successors and assignees (collectively, "Downstream Releasees"), relating to the alleged failure to comply with Proposition 65 with respect to lead and/or nickel in the Covered Products allegedly manufactured, sold or distributed for sale in California by Kenney Releasees, Upstream Releasees, and/or Downstream Releasees before the Effective Date, as alleged in the Notice, related to the Test Results, or for any other reason.

In further consideration of the promises and agreements herein contained, EHA Releasors, and each of them, on its own behalf and not on behalf of the public, hereby waives any and all rights it may have to institute or participate in, directly or indirectly, any form of legal action and releases all claims against Kenney Releasees, Upstream Releasees, and/or Downstream Releasees including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses including, but not exclusively, investigation fees, expert fees and attorney fees arising under Proposition 65 with respect to alleged or actual lead and/or nickel in the Covered Products allegedly manufactured, distributed, sold or offered for sale by Kenney Releasees, Upstream Releasees, and/or Downstream Releasees before the Effective Date.

4.2 Kenney's Release of EHA

Kenney, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees (collectively with Kenney, "Kenney Releasors"), hereby waives any and all claims against EHA and its attorneys and other representatives acting on EHA's behalf and not on behalf of the public (collectively with EHA, "EHA Releasees"), for any and all actions taken or statements made by EHA Releasees, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered Products.

4.3 California Civil Code Section 1542

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice or related to the Test Results, and relating to the Covered Products will develop or be discovered. EHA on behalf of itself, including EHA Releasers, on one hand, and Kenney on behalf of itself, including Kenney Releasers, on the other hand, acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims up through the Effective Date. The Parties acknowledge that the claims released in Sections 4.1 and 4.2 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

EHA and Kenney each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

5. PUBLIC BENEFIT

It is Kenney's understanding that the commitments it has agreed to herein, and actions to be taken by Kenney under this Settlement Agreement confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of Kenney that to the extent any other private party serves a notice and/or initiates an action alleging a violation of Proposition 65 with respect to Kenney's alleged failure to provide a warning concerning actual or alleged exposure to lead prior to use of the Covered Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Covered Products addressed in this Settlement Agreement, provided that Kenney is in material compliance with this Settlement Agreement.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining

provisions shall not be adversely affected.

7. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California.

8. ENFORCEMENT

In any action to enforce the terms of this Settlement Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and costs.

9. NOTICE

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For Kenney:

Erik K. Swanholt
Foley & Lardner LLP
555 S Flower Sreet, Suite 3300
Los Angeles, California 90071
eswanholt@foley.com

For EHA:

Noam Glick
Entorno Law, LLP
225 Broadway, Suite 1900
San Diego, CA 92101

Any Party may, from time to time, specify in writing to the other a change of address to which all notices and other communications shall be sent.

10. COUNTERPARTS; FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)

EHA and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

12. MODIFICATION

This Settlement Agreement may be modified only by written agreement of the Parties.

13. AUTHORIZATION


The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.


AGREED TO:
ENVIRONMENTAL HEALTH
ADVOCATES, INC.

AGREED TO:
KENNEY MANUFACTURING COMPANY

Date: 1/31/25

Date: 2/4/25

By: 

By: 

Name: Allan Cate

Name: Art. Testin

Title: CEO

Title: President & CFO